

REMARKS/ARGUMENTS

The pending claims are Claims 1-46. Claims 1, 4-7, and 9-21 were withdrawn in response to the telephone restriction requirement made by the previous Examiner (Examiner Sandals) on June 10, 2003, which was made with traverse and which is noted on page 8 of the Preliminary Amendment filed on August 12, 2003. Applicant asserts, based upon his record of the telephonic Restriction Requirement noted at page 8 of the Preliminary Amendment, that Examiner Sandals required restriction among 27 groups. In response to this Restriction Requirement Applicant provisionally elected with traverse claims 2, 3, 8, 22 and 41-46 as they read upon SEQ ID NO: 11. It appears that Examiner Sandals did not record this first restriction requirement in the file. Because Applicants withdrew claims based upon a telephone restriction applied by Examiner Sandals, Applicants respectfully assert that the status of these claims is, at present, withdrawn and not cancelled. Claim 42 is amended herein to correct an obvious typographical error in referring to claim 7 rather than to SEQ ID NO: 7. Support for the amendment may be found, for example, at pages 36-37 of the specification as filed. Care has been taken to ensure that no new matter has been added. Entry of the amendment is requested.

Written Restriction Requirement

The present Examiner now imposes an additional Restriction Requirement upon the claims elected in response to the previous Restriction Requirement, requiring Applicant to elect for prosecution the chimeric promoter comprising one of the sequences SEQ ID NOS. 5-16 and either SEQ ID NOS. 1 or 2. Thus, compared to the previous telephonic Restriction Requirement, the

Examiner has imposed a further requirement to elect between SEQ ID NOS. 1 and 2.

Applicant provisionally elects Claims 2, 3, 8, 22 and 41-46 (Group I) as they read upon SEQ ID NO: 11 and SEQ ID NO: 2 with traverse.

Traversal is for the following reasons.

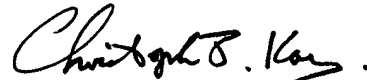
Applicant first note that no lack of Unity of Invention was found in the present application during the International Stage.

Claim 2 is directed to a chimeric promoter comprising at least one *cis*-acting element chosen from among SEQ ID NOS: 5-16. In response to the previous Restriction Requirement, Applicant provisionally elected with traverse claims reading upon SEQ ID NO: 11. However, Claim 2 does not recite SEQ ID NO: 1 or 2. Therefore, the Examiner's statement that claims 2, 3, 8, 22 and 41-46 are directed to "a chimeric promoter comprising one of SEQ ID Nos. 5 to 16 and further comprising SEQ ID NO: 1 or 2" does not properly characterize the claimed invention. Applicant asserts that SEQ ID NO: 1 and 2 are not essential elements of Claim 2. Restriction between SEQ ID NO: 1 and 2 is therefore improper because Claim 2 provides the required single general inventive concept under PCT Rule 13.1. Further, SEQ ID NO: 1 is a fragment of SEQ ID NO: 2 (see Sequence Listing). Therefore, SEQ ID NO: 1 and 2 are structurally related to each other, and therefore possess the required special technical feature under 37 C.F.R. 1.475(a).

For the above reasons, Applicant requests reconsideration of the present Restriction Requirement in its entirety. In the alternative, the Examiner is requested to reconsider the Restriction Requirement as to the requirement to elect between SEQ ID NO: 1 and 2.

Favorable consideration is requested.

Respectfully submitted,



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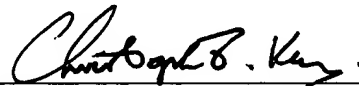
U.S. Patent Application No. 09/831,272
RESPONSE TO RESTRICTION REQUIREMENT

ATTORNEY DOCKET NO.: 4038.001

CERTIFICATE OF MAILING AND AUTHORIZATION TO CHARGE

I hereby certify that the foregoing RESPONSE TO RESTRICTION REQUIREMENT for U.S. Application No. 09/831,272 filed August 13, 2001, was deposited in first class U.S. mail, postage prepaid, addressed: Attn: Mail Stop: _____, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450 on **April 28, 2004**.

The Commissioner is hereby authorized to charge any additional fees, which may be required at any time during the prosecution of this application, except for the issue fee, without specific authorization, or credit any overpayment, to Deposit Account No. 16-0877.



Christopher J. Kay